(1997) 07 BOM CK 0071

In the Bombay High Court

Case No : Writ Petition No. 2181 of 1987

Orkay Silk Mills Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 23-07-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 27

Citation : (1997) 72 ECR 809 : (1998) 98 ELT 310

Hon'ble Judges : T.K. Chandrashekhara Das, J;A..A. Desai, J

Bench : Division Bench

Advocate : Shri K.R. Bulchandani, for the Appellant; Shri M.I. Sethana, Shri H.V. Mehta, R. Asokan and V.G. Rege, for the Respondent

Judgement

A.A. Desai, J.—The petitioners are manufacturers of Polyester Yarn from imported item described as MEG Alcohol. The additional levy was charged by Customs between October, 1985 to February, 1986. They paid the duty. Subsequently, they realised that recovery or levy of the duty was wrong. Therefore, by application dated 26-2-1997 (sic), they asked for refund. Since the Department has refused to refund, the petitioners have made the instant Petition, claiming writ of mandamus against the department for payment of the amount.

2. In view of the decision of the Supreme Court reported in Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, as per Section 27, application claiming refund as such, should be presented within a period of six months as envisaged. In the present case, the claim is barred by limitation.

3. The learned Counsel for Petitioner vehemently urged before us, that since the levying of duty itself was without any authority of tariff, Section 27 as such has no application. In the submission of learned Counsel normal period of limitation for recovery as described is 3 years. The submission is that the application of refund presented on 22-2-1987 (sic) was within the period of limitation of 3

years from the date of payment of duty and as such, it is not barred, in view of the period of limitation.

4. The Limitation Act provides a period of limitation for initiating the proceedings for any recovery of claim in the Court of law. Making of such application for refund of customs duty would not be such proceeding as envisaged of Limitation Act. As such, the period prescribed under the said Act has no application. Alternatively, the learned Counsel urged before us that the instant petition is within the period of limitation.

5. Proceedings under Article 226 are not envisaged by the Limitation Act. The period of limitation prescribed under Limitation Act has no application to the extra ordinary jurisdiction of this Court exercisable under Article 226 of the Constitution of India writ of this Court. The submissions in this behalf are devoid of any merit. Even otherwise, the Authorities under the Customs Act duly empowered to collect the duty, could make a mistake or error in exercise of their power. However, it cannot be successfully argued that erroneous act to which the Petitioner has questioned is without any jurisdiction. Even in view of this matter, the provisions of Section 27 of the Act has application as laid down by the Supreme Court in the case cited supra. Since application is beyond the period of limitation, the same cannot be entertained.

6. Thus, Petition is without any merit and hence dismissed.